

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

| | | |
|------------------------------|---|----------------------------|
| TUTOR DOCTOR SYSTEMS, INC. |) | |
| |) | |
| Plaintiff, |) | Case No. 1:21-cv-00664-MWM |
| |) | |
| v. |) | |
| |) | |
| NATHAN D. SERNOFFSKY, et al. |) | |
| |) | |
| Defendants. |) | |
| |) | |

CONSENT PRELIMINARY INJUNCTION

This matter came before the Court on the plaintiff's Motion for a Temporary Restraining Order and a Preliminary Injunction. The parties have agreed to the entry of this Consent Preliminary Injunction.

1. This Court has jurisdiction over the subject matter of this case and the parties hereto. The Complaint states a claim upon which relief may be granted for unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125 and state law, and for breach of the covenant not to compete contained in the Franchise Agreement between the parties.

2. Plaintiff has filed its Motion for Temporary Restraining Order and Preliminary Injunction in which it alleges that Defendants breached the franchise

agreement existing between the parties by, among other things, operating a competing business under the name Top Tutor through Top Tutor of Ohio, LLC, diverting customers from Defendants' franchise business to Top Tutor, using Plaintiff's business information and programs, and by using some of Plaintiffs' marks.

3. Plaintiff further alleges that, unless the defendants are enjoined by Order of this Court, immediate and irreparable harm to plaintiff will result from the defendants' ongoing conduct.

4. Plaintiff further alleges that there is good cause to believe that any harm to the defendants as a result of this Order will be outweighed by the irreparable harm that the plaintiffs are suffering, and will continue to suffer, as a result of the defendants' conduct.

5. Plaintiff further alleges that there is good cause to believe that the public interest would be served by entry of this Consent Preliminary Injunction.

6. Defendants, by agreeing to this Order, make no admission as to the truth of plaintiff's allegations recited above, in the Motion for Temporary Restraining Order, or in the Complaint, or as to the relief that should be granted in this action.

7. The parties agree to the entry of this Order for preliminary injunction, which shall remain in effect until this Court's determination of the merits of this action or until otherwise modified.

8. Defendants waive the entry of findings of fact and conclusions of law for the purpose of this Order pursuant to Federal Rule of Civil Procedure 52.

INJUNCTION

IT IS THEREFORE ORDERED that the defendants, and all those acting in concert or privity with them, including any of their agents, servants, employees, and attorneys, are enjoined from (a) continuing to operate or own any interest in any business offering tutoring services in zip code 45034, 45039, 45040, 45065, 45152, 45158, or within 25 miles of the outer boundary of the territory encompassed by those zip codes, or within 25 miles of any TUTOR DOCTOR franchised location; (b) continuing to use any registered mark of the TUTOR DOCTOR system, including without limitation the marks TUTOR DOCTOR and X-SKILLS in commerce; (c) continuing to use any information, knowhow, programs, systems, or processes obtained from TDS or any of its affiliates; and (d) continuing to divert any current or former customers of their former TUTOR DOCTOR business, or any other TUTOR DOCTOR business, to any other business.

IT IS FURTHER ORDERED that, in view of the agreement of the parties to this Consent Preliminary Injunction, the Court exercises its discretion under Fed.R.Civ.P 65 to dispense with the requirement of the posting of a bond.

SO ORDERED this 20th day of October 2021 at Cincinnati, Ohio.


United States District Judge

SEEN AND AGREED:

TUTOR DOCTOR SYSTEMS, INC.

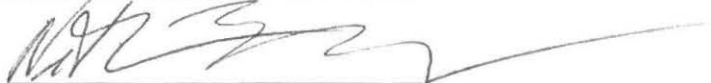
/s/ A.J. Hensel

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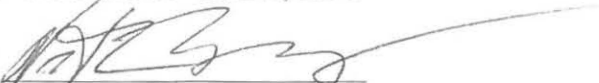
Nathan D. Sernoffsky

EDUCATION RESOURCE CONSULTING, LLC

By: 

Nathan D. Sernoffsky, Member

TOP TUTOR OF OHIO, LLC

By: 

Nathan D. Sernoffsky, Member